FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 01–146; RM–9966; FCC 01–199]

Amendment of Part 90 of the Commission's Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450–470 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes changes to the Commission's Rules concerning low power operations in the private land mobile radio (PLMR) 450–470 MHz band. Many of these proposals reflect a consensus plan and are intended to address a diversity of low power communication requirements.

DATES: Comments are due on or before October 12, 2001; reply comments are due on or before November 13, 2001.

ADDRESSES: Comments should be filed to the Commission's Secretary, Magalie Roman Salas, Office of Secretary, Federal Communications Commission, 445 12th St., SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at www.fcc.gov/e-file/ecfs.html.

FOR FURTHER INFORMATION CONTACT: Guy Benson, Esq. (202) 418–2946, <gbenson@fcc.gov>, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making, (NPRM)*, FCC 01–199 in WT Docket No. 01–146, adopted on July 2, 2001, and released on July 24, 2001. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365, *bmillin@fcc.gov*.

Summary of the Notice of Proposed Rule Making

1. Section 90.267 of the Commission's Rules provides that any regularly assignable channel in the 450–470 MHz PLMR band may be designated by the frequency coordinators as a low power channel in a defined geographic area. Low power stations authorized under this section are limited to two (2) watts output power. The Low Power Plan currently in effect designates 104 ''12.5 kHz offset'' channel pairs (hereinafter ''channel pairs'') for low power operation nationwide: ninety (90) in the Industrial/Business Pool and fourteen (14) in the Public Safety Pool. The 6.25 kHz ''drop in'' channels directly adjacent to each designated 12.5 kHz channel are also designated for low power use.

2. On September 11, 2000, the Land Mobile Communications Council (LMCC) filed a Petition for Rule Making requesting the commencement of a proceeding to consider revisions to the Commission's Rules and policies for low power operations in the 450–470 MHz band. The LMCC is a non-profit association of organizations representing virtually all users of land mobile radio systems, providers of land mobile services, and manufacturers of land mobile radio equipment. LMCC's membership includes all of the Commission's certified part 90 frequency coordinators. The Petition for Rule Making reflects the LMCC's Consensus Plan for low power PLMR frequencies in 450–470 MHz band. This *Notice of Proposed Rule Making* seeks comment on the proposals set forth in the LMCC's Petition as well as other matters related to low power operations in the private land mobile radio (PLMR) 450–470 MHz band.

3. For the ninety (90) Industrial/Business Pool channel pairs, the Commission proposes to adopt the LMCC's proposal to divide these channel pairs into four groups (A, B, C and D) each with differing technical and operational limitations. Group A consisting of fifty (50) channel pairs, would be allowed a maximum power of 20 watts ERP for base stations and 5 watts total power output (TPO) for mobile/portable units. In addition, antenna height for fixed stations would be restricted to 23 meters (75 feet above ground level). Forty (40) of the fifty (50) channel pairs in Group A would be designated for low power use only within 80 km (50 miles) of the top 100 urban areas. Outside of these areas, the 40 channel pairs would be available for use at higher power limits. The ten (10) remaining Group A channel pairs would be designated nationwide for low power (20 watts/5 watts) operation, and would not be available for higher power use outside the top 100 urban areas. The Commission seeks comment as to, where higher power is proposed outside the top 100 urban areas, whether an intermediate power (such as 21–100 watts) should be considered instead. The Commission also seeks comment on how to define the top 100 urban areas.

4. Additionally, the Commission seeks comment on whether to amend the rules so that ten (10) Industrial/Business Pool channel pairs (Group B) would be restricted to low power non-voice operations, and whether voice operations should be allowed on a secondary, non-interfering basis to data.

5. The Commission also seeks comment on whether to amend the rules so that twenty-five (25) channel pairs (Group C) would be available for non-coordinated, itinerant use. Four of the frequencies that LMCC suggested for Group C, however, are currently designated under 47 C.F.R. part 90 for dockside operations on a primary basis. These four frequencies are authorized for mobile operation for radio remote control and telemetering functions, and also may be operated in the continuous carrier transmit mode. We do not believe that sharing between these currently authorized uses and the proposed non-coordinated, itinerant operations is advisable due to the potential for harmful interference. Consequently, we seek comment as to what alternate channels might replace the four frequencies listed by LMCC. Also, the Commission tentatively concludes that ten channel pairs that LMCC suggested for Group C should not be made available for such itinerant use until the end of the wireless medical telemetry transition period (October 2003).

6. The Commission also seeks comment on LMCC's suggestion to retain current rules for the five (5) channel pairs that comprise Group D. Current rules designate these channels, in all areas or specified areas of the nation, for central station alarm use.

7. For the fourteen (14) Public Safety Pool channel pairs, the Commission seeks comment on whether to amend the rules to increase the maximum operating power for the fourteen (14) channel pairs allocated to the Public Safety Pool to five (5) watts TPO.

8. The Commission seeks comment on a number of issues related to LMCC's Petition/Consensus Plan and the Commission's low power rules and policies. For example, comment is sought on whether to amend the rules to codify the Consensus Plan. We also

ask questions about whether to use ''effective radiated power'' or ''total power output'' for power limitations. The Commission seeks comment on whether to amend the rules to limit low power, non-voice communications to the ten channels in Group B, and whether Group A and/or C channels should be designated primarily for voice operations, with non-voice operations authorized on a secondary basis in either group.

9. Finally, the Commission seeks comment on how to treat entities licensed for high power operation (as well as other incumbents) on the channel pairs that are specifically designated for low power operation.

Regulatory Flexibility Act

10. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in the *Notice of Proposed Rule Making.* Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this *Notice of Proposed Rule Making*.

Reason for, and Objectives of, the R&O

11. The Commission tasked the PLMR frequency coordinators to develop a plan for low power operations, through industry consensus, on what was formerly known as the 450–470 MHz low power offset channels. On June 4, 1997, the Land Mobile Communications Council (LMCC) filed this plan (Consensus Plan). Because the LMCC's Consensus Plan required changes to the Commission's Rules, on September 11, 2000, the LMCC submitted a petition for rule making in which it asks the Commission to adopt these rule changes. Therefore, the Commission proposes to amend part 90 of its rules in order to effectuate the changes suggested in the Consensus Plan.

12. These rule changes are needed in order to facilitate the viability of important low power operations in the 450–470 MHz band. Previously, low power operators were licensed on channels that were 12.5 kHz removed from regularly assignable channels in this band (''12.5 kHz offset channels''). These offset channels, however, were reclassified by the Commission for high power operation. Because of the continuing need for low power channels, we believe that implementation of the rule changes proposed in this Notice is in the public interest.

Legal Basis

13. Authority for the proposed rules included in this issuance of this Notice is contained in Sections 1, 4(i), 302, 303(f), and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 1, 154(i), 302, 303(f) and (r), and 332.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

14. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

15. Public Safety radio services and Governmental entities. As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for small radiotelephone (wireless) companies, which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities.

16. Estimates for PLMR Licensees. Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies. Included in this definition are business entities engaged in radiotelephone communications employing no more that 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

17. Equipment Manufacturers. The Commission anticipates that radio equipment manufacturers will be affected by the proposals in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

Reporting, Recordkeeping, and Other Compliance Requirements

18. Reporting, record keeping, and compliance requirements under these proposed rules are nominal. No new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the actions proposed in this rule making proceeding.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule or any part thereof for small entities.

20. Regarding the proposal to increase the power limits and antenna height for low power users operating on the fifty channels in Group A, there should be no significant adverse impact on small entities. Although increasing the power and antenna height limits for low power users on these channels could decrease the number of operators possible in a given area, the Commission believes that the need for higher power and antenna height on these channels outweighs the potential losses. An alternative to this proposal would be to maintain the current power restriction of 2 watts output power and 7 meters antenna height, or impose power limitations less than 20 watts for base stations and 5 watts for mobile/portable stations and less than 23 meters antenna height above ground level. These alternatives, however, would not address the need, especially in hostile communications areas, for more than 2 watts output power and antenna heights of 7 meters.

21. In addition, regarding the proposal to designate 25 channels for low power, itinerant use in Group C, incumbent licensees, some of which may be small entities, could face interference from itinerant users that will not be required to coordinate their operations through a certified frequency coordinator. Such potential interference, however, is balanced against the need for itinerant operations in the PLMR services. In this connection, small businesses that require itinerant operations will be eligible for these channels and may benefit from the proposal. Although comment is sought as to how to treat incumbents generally in Group C, commenters should specifically discuss those incumbents that are considered to be small businesses.

22. Regarding the proposal to require manufacturers of radios that are capable of working on these Group C channels to construct the radios so that they only work on these 25 channels and other UHF color dot and star dot frequencies, there should be no significant adverse impact on small entities. An alternative to this proposal would be to not require manufacturers to construct the radios so as to limit the frequencies that they are capable of working on. This alternative would not, however, help protect full power coordinated channels from additional co-channel conflicts that might occur from uncoordinated users.

23. Regarding the proposal to allow 5 watts ERP for the fourteen channels in the Public Safety Pool, there should be no significant adverse impact on small entities. An alternative to this proposal would be to maintain the current limitation of 2 watts output power or to impose a power limitation of less than 5 watts ERP. Neither of these alternatives, however, would be sufficient to promote flexibility for Public Safety Pool licensees that require more than 2 watts output power for their operations.

24. Finally, comment is sought on how the changes proposed in the Notice will effect small entities.

Report to Congress

25. The Commission will send a copy of the *NPRM,* including this IRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *NPRM* and IRFA (or summaries thereof) will also be published in the **Federal Register**.

Administrative Matters

Ex Parte Rules—Permit-but-Disclose Proceeding

26. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, if they are disclosed as provided in the Commission's Rules. *See generally* 47 CFR 1.1200(a), 1.1203, and 1.1206.

Alternative Formats

27. Alternative formats (computer diskette, large print, audio cassette and Braille) are available from Brian Millin at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov*. This Notice can also be downloaded at *http://www.fcc.gov/dtf/.*

Pleading Dates

28. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before October 12, 2001 and reply comments on or before November 13, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), *http://www.fcc.gov/e-file/ecfs.html,* or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 23,121 (1998).

29. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

30. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW–A325, Washington, D.C. 20554.

Ordering Clauses

31. Accordingly, *It is ordered* that, pursuant to Sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), 332, the Petition for Rule Making filed by the Land Mobile Communications Council

on September 11, 2000, Is Granted to the extent indicated herein.

32. It Is Further Ordered that, pursuant to Sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), 332, Notice is Hereby given of the proposed regulatory changes described in this Notice of Proposed Rule Making, and that Comment Is Sought on these proposals.

33. It Is Further Ordered that the Commission's Consumer Information Bureau, Reference Information Center, Shall Send a copy of this *Notice of Proposed Rule Making*, WT Docket No. 01–146, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

For reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.20 is amended as follows:

A. The table in paragraph (c)(3) is amended by revising the entries for the following frequencies to include new limitation number 84 (Note: In the final rule, we will set out the full entry for each frequency listed):

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

453.03125 MHz, 453.0375 MHz, 453.04375 MHz, 453.05625 MHz, 453.0625 MHz, 453.06875 MHz, 453.08125 MHz, 453.0875 MHz, 453.09375 MHz, 453.10625 MHz, 453.1125 MHz, 453.11875 MHz, 453.13125 MHz, 453.1375 MHz, 453.14375 MHz, 453.88125 MHz, 453.8875 MHz, 453.89375 MHz, 453.90625 MHz, 453.9125 MHz, 453.91875 MHz, 453.93125 MHz, 453.9375 MHz, 453.94375 MHz, 453.95625 MHz, 453.9625 MHz, 453.96875 MHz, 453.98125 MHz, 453.9875 MHz, 453.99375 MHz, 458.03125 MHz, 458.0375 MHz, 458.04375 MHz, 458.05625 MHz, 458.0625 MHz, 458.06875 MHz, 458.08125 MHz, 458.0875 MHz, 458.09375 MHz, 458.10625 MHz, 458.1125 MHz, 458.11875 MHz, 458.13125 MHz, 458.1375 MHz, 458.14375 MHz, 458.88125 MHz, 458.8875 MHz, 458.89375 MHz, 458.90625 MHz, 458.9125 MHz, 458.91875 MHz, 458.93125 MHz, 458.9375 MHz, 458.94375 MHz, 458.95625 MHz, 458.9625 MHz, 458.96875 MHz, 458.98125 MHz, 458.9875 MHz, 458.99375 MHz, 460.48125 MHz, 460.4875 MHz, 460.49375 MHz, 460.50625 MHz, 460.5125 MHz, 460.51875 MHz, 460.53125 MHz, 460.5375 MHz, 460.54375 MHz, 460.55625 MHz, 460.5625 MHz, 460.56875 MHz, 465.48125 MHz, 465.4875 MHz, 465.49375 MHz, 465.50625 MHz, 465.5125 MHz, 465.51875 MHz, 465.53125 MHz, 465.5375 MHz, 465.54375 MHz, 465.55625 MHz, 465.5625 MHz, 465.56875 MHz.

B. A new paragraph (d)(84) is added to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(d) * * *

(84) These frequencies are low power frequencies governed by § 90.267.

3. Section 90.35(b)(3) is amended as follows:

§ 90.35 Industrial/Business Pool.

A. The table in paragraph (b)(3) is amended by revising the entries for the following frequencies to include new limitation number 83 (Note: In the final rule, we will set out the full entry for each frequency listed):

451.18125 MHz, 451.1875 MHz, 451.19375 MHz, 451.23125 MHz, 451.2375 MHz, 451.24375 MHz, 451.28125 MHz, 451.2875 MHz, 451.29375 MHz, 451.30625 MHz, 451.3125 MHz, 451.31875 MHz, 451.33125 MHz, 451.3375 MHz, 451.34375 MHz, 451.35625 MHz, 451.3625 MHz, 451.36875 MHz, 451.38125 MHz, 451.3875 MHz, 451.39375 MHz, 451.40625 MHz, 451.4125 MHz, 451.41875 MHz, 451.43125 MHz, 451.4375 MHz, 451.44375 MHz, 451.45625 MHz, 451.4625 MHz, 451.46875 MHz, 451.48125 MHz, 451.4875 MHz, 451.49375 MHz, 451.50625 MHz, 451.5125 MHz, 451.51875 MHz, 451.53125 MHz, 451.5375 MHz, 451.54375 MHz, 451.55625 MHz, 451.5625 MHz, 451.56875 MHz, 451.58125 MHz, 451.5875 MHz, 451.59375 MHz, 451.60625 MHz, 451.6125 MHz, 451.61875 MHz, 451.63125 MHz, 451.6375 MHz, 451.64375 MHz, 451.65625 MHz, 451.6625 MHz, 451.66875 MHz, 451.68125 MHz, 451.6875 MHz, 451.69375 MHz, 451.70625 MHz, 451.7125 MHz, 451.71875 MHz, 451.73125 MHz, 451.7375 MHz, 451.74375 MHz, 451.75625 MHz, 451.7625 MHz, 451.76875 MHz, 452.03125 MHz, 452.0375 MHz, 452.04375 MHz, 452.05625 MHz, 452.0625 MHz, 452.06875 MHz, 452.08125 MHz, 452.0875 MHz, 452.09375 MHz, 452.10625 MHz, 452.1125 MHz, 452.11875 MHz, 452.13125 MHz, 452.1375 MHz, 452.14375 MHz, 452.15625 MHz, 452.1625 MHz, 452.16875 MHz, 452.18125 MHz, 452.1875 MHz, 452.19375 MHz, 452.28125 MHz, 452.2875 MHz, 452.29375 MHz, 452.30625 MHz, 452.3125 MHz, 452.31875 MHz, 452.40625 MHz, 452.4125 MHz, 452.41875 MHz, 452.48125 MHz, 452.4875 MHz, 452.49375 MHz, 452.50625 MHz, 452.5125 MHz, 452.51875 MHz, 452.53125 MHz, 452.5375 MHz, 452.54375 MHz, 452.63125 MHz, 452.6375 MHz, 452.64375 MHz, 452.65625 MHz, 452.6625 MHz, 452.66875 MHz, 452.68125 MHz, 452.6875 MHz, 452.69375 MHz, 452.70625 MHz, 452.7125 MHz, 452.71875 MHz, 452.75625 MHz, 452.7625 MHz, 452.76875 MHz, 452.78125 MHz, 452.7875 MHz, 452.79375 MHz, 452.80625 MHz, 452.8125 MHz, 452.81875 MHz, 452.83125 MHz, 452.8375 MHz, 452.84375 MHz, 452.85625 MHz, 452.8625 MHz, 452.86875 MHz, 452.88125 MHz, 452.8875 MHz, 452.89375 MHz, 452.98125 MHz, 452.9875 MHz, 452.99375 MHz, 456.18125 MHz, 456.1875 MHz, 456.19375 MHz, 456.23125 MHz, 456.2375 MHz, 456.24375 MHz, 456.28125 MHz, 456.2875 MHz, 456.29375 MHz, 456.30625 MHz, 456.3125 MHz, 456.31875 MHz, 456.33125 MHz, 456.3375 MHz, 456.34375 MHz, 456.35625 MHz, 456.3625 MHz, 456.36875 MHz, 456.38125 MHz, 456.3875 MHz, 456.39375 MHz, 456.40625 MHz, 456.4125 MHz, 456.41875 MHz, 456.43125 MHz, 456.4375 MHz, 456.44375 MHz, 456.45625 MHz, 456.4675 MHz, 456.46875 MHz, 456.48125 MHz, 456.4875 MHz, 456.49375 MHz, 456.50625 MHz, 456.5125 MHz, 456.51875 MHz, 456.53125 MHz, 456.5375 MHz, 456.54375 MHz, 456.55625 MHz, 456.5625 MHz, 456.56875 MHz, 456.58125 MHz,

456.5875 MHz, 456.59375 MHz, 456.60625 MHz, 456.6125 MHz, 456.61875 MHz, 456.63125 MHz, 456.6375 MHz, 456.64375 MHz, 456.65625 MHz, 456.6625 MHz, 456.66875 MHz, 456.68125 MHz, 456.6875 MHz, 456.69375 MHz, 456.70625 MHz, 456.7125 MHz, 456.71875 MHz, 456.73125 MHz, 456.7375 MHz, 456.74375 MHz, 456.75625 MHz, 456.7625 MHz, 456.76875 MHz, 457.03125 MHz, 457.0375 MHz, 457.04375 MHz, 457.05625 MHz, 457.0625 MHz, 457.06875 MHz,

457.08125 MHz, 457.0875 MHz, 457.09375 MHz, 457.10625 MHz, 457.1125 MHz, 457.11875 MHz, 457.13125 MHz, 457.1375 MHz, 457.14375 MHz, 457.15625 MHz, 457.1625 MHz, 457.16875 MHz, 457.18125 MHz, 457.1875 MHz, 457.19375 MHz, 457.28125 MHz, 457.2875 MHz, 457.29375 MHz, 457.30625 MHz, 457.3125 MHz, 457.31875 MHz, 457.40625 MHz, 457.4125 MHz, 457.41875 MHz, 457.48125 MHz, 457.4875 MHz, 457.49375 MHz, 457.50625 MHz, 457.5125 MHz, 457.51875 MHz, 457.53125 MHz, 457.5375 MHz, 457.54375 MHz, 457.63125 MHz, 457.6375 MHz, 457.64375 MHz, 457.65625 MHz, 457.6625 MHz, 457.66875 MHz, 457.68125 MHz, 457.6875 MHz, 457.69375 MHz, 457.70625 MHz, 457.7125 MHz, 457.71875 MHz, 457.75625 MHz, 457.7625 MHz, 457.76875 MHz, 457.78125 MHz, 457.7875 MHz, 457.79375 MHz, 457.80625 MHz, 457.8125 MHz, 457.81875 MHz, 457.83125 MHz, 457.8375 MHz, 457.84375 MHz, 457.85625 MHz, 457.8625 MHz, 457.86875 MHz, 457.88125 MHz, 457.8875 MHz, 457.89375 MHz, 457.98125 MHz, 457.9875 MHz, 457.99375 MHz, 460.90625 MHz, 460.9125 MHz, 460.91875 MHz, 460.93125 MHz, 460.9375 MHz, 460.94375 MHz, 460.95625 MHz, 460.9625 MHz, 460.96875 MHz, 460.98125 MHz, 460.9875 MHz, 460.99375 MHz, 461.00625 MHz, 461.0125 MHz, 461.01875 MHz, 461.03125 MHz, 461.0375 MHz, 461.04375 MHz, 461.05625 MHz, 461.0625 MHz, 461.06875 MHz, 461.08125 MHz, 461.0875 MHz, 461.09375 MHz, 461.10625 MHz, 461.1125 MHz, 461.11875 MHz, 461.13125 MHz, 461.1375 MHz, 461.14375 MHz, 461.15625 MHz, 461.1625 MHz, 461.16875 MHz, 461.18125 MHz, 461.1875 MHz, 461.19375 MHz, 461.20625 MHz, 461.2125 MHz, 461.21875 MHz,

461.23125 MHz, 461.2375 MHz, 461.24375 MHz, 461.25625 MHz, 461.2625 MHz, 461.26875 MHz, 461.28125 MHz, 461.2875 MHz, 461.29375 MHz, 461.30625 MHz, 461.3125 MHz, 461.31875 MHz, 461.33125 MHz, 461.3375 MHz, 461.34375 MHz, 461.35625 MHz, 461.3625 MHz, 461.36875 MHz, 462.18125 MHz, 462.1875 MHz, 462.19375 MHz, 462.20625 MHz, 462.2125 MHz, 462.21875 MHz, 462.23152 MHz, 462.2375 MHz, 462.24375 MHz, 462.25625 MHz, 462.2625 MHz, 462.26875 MHz, 462.28125 MHz, 462.2875 MHz, 462.29375 MHz, 462.30625 MHz, 462.3125 MHz, 462.31875 MHz, 462.33125 MHz, 462.3375 MHz, 462.34375 MHz, 462.35625 MHz, 462.3625 MHz, 462.36875 MHz, 462.38125 MHz, 462.3875 MHz, 462.39375 MHz, 462.40625 MHz, 462.4125 MHz, 462.41875 MHz, 462.43125 MHz, 462.4375 MHz, 462.44375 MHz, 462.45625 MHz, 462.4625 MHz, 462.46875 MHz, 462.48125 MHz, 462.4875 MHz, 462.49375 MHz, 462.50625 MHz, 462.5125 MHz, 462.51875 MHz, 462.8625 MHz, 462.8875 MHz, 462.9125 MHz, 464.48125 MHz, 464.4875 MHz, 464.5125 MHz, 464.51875 MHz, 464.53125 MHz, 464.5375 MHz, 464.5625 MHz, 464.56875 MHz, 465.90625 MHz, 465.9125 MHz, 465.91875 MHz, 465.93125 MHz, 465.9375 MHz, 465.94375 MHz, 465.95625 MHz, 465.9625 MHz, 465.96875 MHz, 465.98125 MHz, 465.9875 MHz, 465.99375 MHz, 466.00625 MHz, 466.0125 MHz, 466.01875 MHz, 466.03125 MHz, 466.0375 MHz, 466.04375 MHz, 466.05625 MHz, 466.0625 MHz, 466.06875 MHz, 466.08125 MHz, 466.0875 MHz, 466.09375 MHz, 466.10625 MHz, 466.1125 MHz, 466.11875 MHz, 466.13125 MHz, 466.1375 MHz, 466.14375 MHz, 466.15625 MHz, 466.1625 MHz, 466.16875 MHz, 466.18125 MHz,

466.1875 MHz, 466.19375 MHz, 466.20625 MHz, 466.2125 MHz, 466.21875 MHz, 466.23125 MHz, 466.2375 MHz, 466.24375 MHz, 466.25625 MHz, 466.2625 MHz, 466.26875 MHz, 466.28125 MHz, 466.2875 MHz, 466.29375 MHz, 466.30625 MHz, 466.3125 MHz, 466.31875 MHz, 466.33125 MHz, 466.3375 MHz, 466.34375 MHz, 466.35625 MHz, 466.3625 MHz, 466.36875 MHz, 467.18125 MHz, 467.1875 MHz, 467.19375 MHz, 467.20625 MHz, 467.2125 MHz, 467.21875 MHz, 467.23152 MHz, 467.2375 MHz, 467.24375 MHz, 467.25625 MHz, 467.2625 MHz, 467.26875 MHz, 467.28125 MHz, 467.2875 MHz, 467.29375 MHz, 467.30625 MHz, 467.3125 MHz, 467.31875 MHz, 467.33125 MHz, 467.3375 MHz, 467.34375 MHz, 467.35625 MHz, 467.3625 MHz, 467.36875 MHz, 467.38125 MHz, 467.3875 MHz, 467.39375 MHz, 467.40625 MHz, 467.4125 MHz, 467.41875 MHz, 467.43125 MHz, 467.4375 MHz, 467.44375 MHz, 467.45625 MHz, 467.4675 MHz, 467.46875 MHz, 467.48125 MHz, 467.4875 MHz, 467.49375 MHz, 467.50625 MHz, 467.5125 MHz, 467.51875 MHz, 467.8625 MHz, 467.8875 MHz, 467.9125 MHz, 469.48125 MHz, 469.4875 MHz, 469.5125 MHz, 469.51875 MHz, 469.53125 MHz, 469.5375 MHz, 469.5625 MHz, 469.56875 MHz.

B. A new paragraph (c)(83) is added to read as follows:

§ 90.35 Industrial/business pool.

* * * * *

(c) * * *

(83) These frequencies are low power frequencies governed by § 90.267.

4. Section 90.35 is amended by revising paragraph (c)(67) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(c) * * *

(67) Use of this frequency is on a secondary basis and subject to the provisions of § 90.267(a)(4), (a)(7), (a)(8) and (a)(9).

5. Section 90.203 is amended by adding paragraph (m) to read as follows:

§ 90.203 Certification required.

* * * * *

(m) Transmitters for use on low power itinerant channels must be certificated, in accordance with the provisions of Part 2 of the Commission's Rules, and designed so that their operation is limited to the frequencies listed in § 90.267(a)(4) and/or frequencies 464.500 MHz, 464.550 MHz, 467.850 MHz, 467.875 MHz, 467.900 MHz , and 467.925 MHz.

6. Section 90.267 is amended by revising paragraph (a) to read as follows:

§ 90.267 Assignment and use of frequencies in the 450–470 MHz band for low power use.

(a) The following frequencies between 450–470 MHz are designated for low-power use subject to the provisions of this section. Pairs are shown but single frequencies are available for simplex operations.

(1) Group A1 Frequencies. The Industrial/Business Pool frequencies listed in Group A1 are available on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b), as follows:

(i) Within 80 kilometers of the top [xxx] urban areas, operation on these frequencies is limited to 5 watts output power for mobile stations and 20 watts effective radiated power for fixed stations. A maximum antenna height of 23 meters (75 feet) above ground is authorized for fixed stations.

(ii) Outside 80 kilometers of the top [xxx] urban areas, operation on these frequencies is available for full power operation pursuant to the power and antenna height limits listed in § 90.205.

INDUSTRIAL/BUSINESS POOL GROUP A1 LOW POWER FREQUENCIES

451.18125	451.58125	452.10625	452.70625
456.18125	456.58125	457.10625	457.70625
451.1875	451.5875	452.1125	452.7125
456.1875	456.5875	457.1125	457.7125
451.19375	451.59375	452.11875	452.71875
456.19375	456.59375	457.11875	457.71875
451.28125	451.60625	452.13125	452.78125
456.28125	456.60625	457.13125	457.78125
451.2875	451.6125	452.1375	452.7875
456.2875	456.6125	457.1375	457.7875
451.29375	451.61875	452.14375	452.79375
456.29375	456.61875	457.14375	457.79375
451.30625	451.65625	452.15625	452.80625
456.30625	456.65625	457.15625	457.80625
451.3125	451.6625	452.1625	452.8125
456.3125	456.6625	457.1625	457.8125
451.31875	451.66875	452.16875	452.81875
456.31875	456.66875	457.16875	457.81875
451.35625	451.68125	452.18125	452.83125
456.35625	456.68125	457.18125	457.83125
451.3625	451.6875	452.1875	452.8375
456.3625	456.6875	457.1875	457.8375
451.36875	451.69375	452.19375	453.84375
456.36875	456.69375	457.19375	457.84375
451.38125	451.70625	452.28125	452.88125
456.38125	456.70625	457.28125	457.88125
451.3875	451.7125	452.2875	452.8875
456.3875	456.7125	457.2875	457.8875
451.39375	451.71875	452.29375	452.89375
456.39375	456.71875	457.29375	457.89375
451.40625	451.73125	452.48125	452.98125
456.40625	456.73125	457.48125	457.98125
451.4125	451.7375	452.4875	452.9875
456.4125	456.7375	457.4875	457.9875
451.41875	451.74375	452.49375	452.99375
456.41875	456.74375	457.49375	457.99375
451.45625	451.75625	452.53125	462.18125
456.45625	456.75625	457.53125	467.18125
451.4625	451.7625	452.5375	462.1875
456.4625	456.7625	457.5375	467.1875
451.46875	451.76825	452.54375	462.19375
456.46875	456.76875	457.54375	467.19375
451.48125	452.03125	452.63125	462.45625
456.48125	457.03125	457.63125	467.45625
451.4875	452.0375	452.6375	462.4625
456.4875	457.0375	457.6375	467.4625
451.49375	452.04375	452.64375	462.46875
456.49375	457.04375	457.64375	467.46875
451.50625	452.05625	452.65625	462.48125
456.50625	457.05625	457.65625	467.48125
451.5152	452.0625	452.6625	462.4875
456.5125	457.0625	457.6625	467.4875
451.51875	452.06875	452.66875	462.49375
456.51875	457.06875	457.66875	467.49375
451.55625	452.08125	452.68125	462.50625
456.55625	457.08125	457.68125	467.50625
451.5625	452.0875	452.6875	462.5125
456.5625	457.0875	457.6875	467.5125
451.56875	452.09375	452.69375	462.51875
456.56875	457.09375	457.69375	467.51875

(2) Group A2 Frequencies. The Industrial/Business Pool frequencies listed in Group A2 are available nationwide on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b). Operation on these frequencies is limited to 5 watts output power for mobile stations and 20 watts effective radiated power for fixed stations. A maximum antenna height of 23 meters (75 feet) above ground is authorized for fixed stations.

INDUSTRIAL/BUSINESS POOL GROUP A2 LOW POWER FREQUENCIES

451.23125	451.53125	452.40625	452.85625
456.23125	456.53125	457.40625	457.85625
451.2375	451.5375	452.4125	452.8625
456.2375	456.5375	457.4125	457.8625
451.24375	451.54375	452.41875	452.86875
456.24375	456.54375	457.41875	457.86875
451.33125	451.63125	452.50625	
456.33125	456.63125	457.50625	
451.3375	451.6375	452.5125	
456.3375	456.6375	457.5125	
451.34375	451.64375	452.51875	
456.34375	456.64375	457.51875	
451.43125	452.30625	452.75625	
456.43125	457.30625	457.75625	
451.4375	452.3125	452.7625	
456.4375	457.3125	457.7625	
451.44375	452.31875	452.76875	
456.44375	457.31875	457.76875	

(3) Group B Frequencies. The Industrial/Business Pool frequencies listed in Group B are available nationwide on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b), for data operations. Operation on these frequencies is limited to 2 watts output power for mobile or fixed stations. A maximum antenna height of 23 meters (75 feet) above ground is authorized for fixed stations.

INDUSTRIAL/BUSINESS POOL GROUP B LOW POWER FREQUENCIES

462.20625	462.28125	462.35625	462.43125
467.20625	467.28125	467.35625	467.43125
462.2125	462.2875	462.3625	462.4375
467.2125	467.2875	467.3625	467.4375
462.21875	462.29375	462.36875	462.44375
467.21875	467.29375	467.36875	467.44375
462.23152	462.30625	462.38125	
467.23152	467.30625	467.38125	
462.2375	462.3125	462.3875	
467.2375	467.3125	467.3875	
462.24375	462.31875	462.39375	
467.24375	467.31875	467.39375	
462.25625	462.33125	462.40625	
467.25625	467.33125	467.40625	
462.2625	462.3375	462.4125	
467.2625	467.3375	467.4125	
462.26875	462.34375	462.41875	
467.26875	467.34375	467.41875	

(4) Group C Frequencies. The Industrial/Business Pool frequencies listed in Group C are available nationwide for non-coordinated itinerant use. Operation on these frequencies is limited to 2 watts output power for mobile or fixed stations. A maximum antenna height of 7 meters (20 feet) above ground is authorized for fixed stations. The frequencies in Group C that are subject to the provisions of § 90.35(c)(67) will not be available for itinerant use until October 17, 2003.

INDUSTRIAL/BUSINESS POOL GROUP C LOW POWER FREQUENCIES

461.03125	461.15625	461.28125	
466.03125	466.15625	466.28125	
461.0375	461.1625	461.2875	462.8625
466.0375	466.1625	466.2875	467.8625
461.04375	461.16875	461.29375	462.8875
466.04375	466.16875	466.29375	467.8875
461.05625	461.18125	461.30625	462.9125
466.05625	466.18125	466.30625	467.9125
461.0625	461.1875	461.3125	464.48125
466.0625	466.1875	466.3125	469.48125
461.06875	461.19375	461.31875	464.4875
466.06875	466.19375	466.31875	469.4875
461.08125	461.20625	461.33125	464.5125
466.08125	466.20625	466.33125	469.5125
461.0875	461.2125	461.3375	464.51875
466.0875	466.2125	466.3375	469.51875
461.09375	461.21875	461.34375	464.53125
466.09375	466.21875	466.34375	469.53125
461.10625	461.23125	461.35625	464.5375

INDUSTRIAL/BUSINESS POOL GROUP C LOW POWER FREQUENCIES—Continued

466.10625	466.23125	466.35625	469.5375
461.1125	461.2375	461.3625	464.5625
466.1125	466.2375	466.3625	469.5625
461.11875	461.24375	461.36875	464.56875
466.11875	466.24375	466.36875	469.56875
461.13125	461.25625		
466.13125	466.25625		
461.1375	461.2625		
466.1375	466.2625		
461.14375	461.26875		
466.14375	466.26875		

(5) Group D Frequencies. The Industrial/Business Pool frequencies listed in Group D are available for central station alarm operations in urban areas as defined in § 90.35(c)(63) and § 90.35(c)(64). Central alarm stations may utilize antennas mounted not more than 7 meters (20 feet) above a man-made supporting structure. Outside the urban areas described in § 90.35(c)(63), Group D frequencies are available for general industrial/business use on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b). Non-central station alarm operation on these frequencies is limited to 2 watts output power for mobile or fixed stations. Non-central station alarm stations are limited to a maximum antenna height of 7 meters (20 feet) above ground.

INDUSTRIAL/BUSINESS POOL GROUP D LOW POWER FREQUENCIES

460.90625	460.95625	461.00625
465.90625	465.95625	466.00625
460.9125	460.9625	461.0125
465.9125	465.9625	466.0125
460.91875	460.96875	461.01875
466.91875	465.96875	466.01875
460.93125	460.98125	
465.93125	465.98125	
460.9375	460.9875	
465.9375	465.9875	
460.94375	460.99375	
465.94375	465.99375	

(6) Low Power Public Safety Frequencies. The frequencies listed in the Public Safety Pool Low Power Group are available nationwide on a coordinated basis, pursuant to § 90.20(c)(2) and § 90.175(b). Operation on these frequencies is limited to 5 watts output power for mobile or fixed stations. A maximum antenna height of 7 meters (20 feet) above ground is authorized for fixed stations.

PUBLIC SAFETY POOL LOW POWER FREQUENCIES

453.03125	453.13125	453.95625	460.53125
458.03125	458.13125	458.95625	465.53125
453.0375	453.1375	453.9625	460.5375
458.0375	458.1375	458.9625	465.5375
453.04375	453.14375	453.96875	460.54375
458.04375	458.14375	458.96875	465.54375
453.05625	453.88125	453.98125	460.55625
458.05625	458.88125	458.98125	465.55625
453.0625	453.8875	453.9875	460.5625
458.0625	458.8875	458.9875	465.5625
453.06875	453.89375	453.99375	460.56875
458.06875	458.89375	458.99375	465.56875
453.08125	453.90625	460.48125	
458.08125	458.90625	465.48125	
453.0875	453.9125	460.4875	
458.0875	458.9125	465.4875	
453.09375	453.91875	460.49375	
458.09375	458.91875	465.49375	
453.10625	453.93125	460.50625	
458.10625	458.93125	465.50625	
453.1125	453.9375	460.5125	
458.1125	458.9375	465.5125	
453.11875	453.94375	460.51875	
458.11875	458.94375	465.51875	

(7) Wide area operations will not be authorized. The area of normal day-to-day operations will be described in the application in terms of maximum distance from a geographic center (latitude and longitude).

(8) A hospital or health care institution holding a license to operate a radio station under this part may operate a medical radio telemetry device with an output power not to exceed 20 milliwatts without specific authorization from the Commission. All licensees operating under this authority must comply with the requirements and limitations set forth in this section.

(9) Antennas of mobile stations used as fixed stations communicating with one or more associated stations located within degrees of azimuth shall be directional and have a front to back ratio of at least 15 dB.

(i) No limit shall be placed on the length or height above ground level of any commercially manufactured radiating transmission line when the transmission line is terminated in a non-radiating load and is routed at least 7 meters (20 feet) interior to the edge of any structure or is routed below ground level.

(ii) Sea-based stations may utilize antennas mounted not more than 7 meters (20 feet) above a man-made supporting structure, including antenna structures.

* * * * *

[FR Doc. 01–22439 Filed 9–11–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 174, 175, 176, and 177

[Docket No. RSPA–01–10568 (HM–207B)]

RIN 2137–AC64

Hazardous Materials: Retention of Shipping Papers

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing to amend the Hazardous Materials Regulations to require shippers and carriers to retain a copy of each hazardous material shipping paper, or an electronic image thereof, for a period of 375 days after the date the hazardous material is accepted by a carrier.

DATES: Comments must be received by November 13, 2001.

ADDRESSES: You must address comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street SW., Washington, DC 20590–0001. You should identify the docket number (RSPA–01–10568 (HM–207B)) and submit your comments in two copies. If you want to confirm that we received your comments, you should include a self-addressed, stamped postcard. You may submit comments by e-mail by accessing the Dockets Management System website at: *http://dms.dot.gov.* Click on ''Electronic Submission'' to obtain instructions for filing a document electronically. The Dockets Management System is located on the Plaza Level of the Department of Transportation headquarters building (Nassif building) at the above address. You may review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. You may also review comments on-line at the DOT Dockets Management System web site at: *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Deborah Boothe of the Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation.

SUPPLEMENTARY INFORMATION:

I. Background

Any person who offers a hazardous material for transportation in commerce must describe the hazardous material on a shipping paper in the manner required in 49 CFR part 172, subpart C. A shipping paper includes ''a shipping order, bill of lading, manifest or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203 and 172.204.'' 49 CFR 171.8 (definition of ''shipping paper''). A hazardous waste manifest ''may be used as the shipping paper'' if it contains all the information required by 49 CFR part 172, subpart C. 49 CFR 172.205(h).

Since 1980, generators and transporters of hazardous waste have been required to retain a copy of the hazardous waste manifest ''for three years from the date the waste was accepted by the initial carrier.'' 49 CFR 172.205(e)(5), adopted in RSPA's May 22, 1980 final rule, 45 FR 34560, 34698. *See also* regulations of the U.S. Environmental Protection Agency at 40 CFR 262.40(a), 263.22(a). In 1994, Congress amended Federal hazardous material transportation law to require that, after a hazardous material ''is no longer in transportation,'' each offeror and carrier of a hazardous material must retain the shipping paper ''or electronic image thereof for a period of 1 year to be accessible through their respective principal places of business.'' 49 U.S.C. 5110(e), added by Pub. L. 103–311, Title I, § 115, 108 Stat. 1678 (Aug. 26, 1994). That section also provides that the offeror and carrier ''shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations.''

RSPA proposes to amend the HMR to conform with § 5110(e). A paper copy of the shipping paper must accompany a hazardous material during transportation. We propose to add a new § 172.201(e) and amend §§ 174.24, 175.30, 176.24, and 177.817 to require each shipper and carrier to retain a copy of the shipping paper, or an electronic image thereof, for a period of 375 days after the date a hazardous material is offered for transportation by the shipper and accepted by the carrier. For purposes of the 375-day retention requirement, an electronic image includes an image transmitted by a facsimile (FAX) machine, an image on the screen of a computer, or an image generated by an optical imaging machine.

The statute requires that each shipper and carrier of a hazardous material retain the shipping paper or electronic image thereof for a period of one year after the hazardous material is no longer in transportation. However, the shipper may not know the exact date when transportation ends, nor will an originating or intermediate carrier know when transportation ends if it does not deliver the hazardous material to the consignee. Therefore, we are proposing that the 375-day retention period begin from the date the shipment is offered and accepted by the initial carrier for transportation. This is the same date that the three-year retention period for hazardous waste manifests starts. (49 CFR 172.205(e)(5)). Well over 95 percent of hazardous materials shipments are delivered within 10 days after they are offered to a carrier. Thus, for these shipments, our proposal to begin the 375-day retention period on the date a shipment is offered and accepted by the initial carrier is consistent with the statutory requirement for retention of shipping documents for one year after transportation ends. For the small percentage of shipments that take longer than 10 days to deliver, especially those shipments involving interlining and international transportation, the shipper and initial and intermediate carriers will likely not know the delivery date for the shipment and will therefore be uncertain about the retention period if the retention period begins with the delivery date. To require shippers and carriers to determine an exact delivery